different. As it is I can only use my common sense and apply it to such common knowledge as I feel I am entitled to assume. Doing this I am unable to come to the conclusion that this woman by her employment as a weeding coolie on a rubber estate was exposed to any substantially greater danger of being struck by lightning than any other person who happened to be in that locality at that particular time. Indeed it might well be argued that because of the large number of trees by which she was surrounded (as opposed to being under the shelter of an isolated one) she was less exposed to danger than a person in the same locality who was not so situated.

4. Naturally arbitrators under any system of Workmen's Compensation Law have tended to construe the law as far as possible in favour of the workman, but there must be limits to this and to my mind this is one of them. I do not think that this accident arose out of and in the course of this woman's employment and the application is dismissed. I have no power to order costs against the Assistant Controller or the dependants and in any event I am quite sure that Mr. Rix would not ask for them.

Application dismissed.

[APPELLATE CIVIL JURISDICTION]

GORDON-SMITH, Ag. J.A.

October 3, 1939.

CHAN CHOU HAR

v.

CHAN PHOOI HOONG (No. 2).

[SELANGOR CIVIL SUIT No. 100 of 1939]

Civil Procedure Code, Chapter XXXIX., Ss. 212, 213—summary procedure—cross-examination of deponent on affidavit—order for—whether open to review—English Rules relating to summary procedure held inapplicable in the Federated Malay States.

Once the Court has properly exercised its discretion in making an order under Sections 212 and 213 of the Civil Procedure Code that a deponent do appear for cross-examination on his affidavit, the order is not open to review by a higher tribunal.

The English rules relating to summary procedure and the practice thereunder (Order 14 of the Rules of the Supreme Court) are not relevant in proceedings under Chapter XXXIX of the Civil Procedure Code (Summary Procedure).

Cases referred to:—

(1) *Abrahams v. Dunlop Pneumatic Co.*, (1905) 1 K.B. 46.

(2) *Fuller & Co. v. Alexander Bros.*, (1882) 52 L.J.Q.B. 103.

(3) *Millard v. Baddelley*, (1884) W.N. 96.

APPEAL from the decision of the Registrar dated 8th September 1939, ordering the defendant to appear for cross-examination on his affidavit.

After remission of case by Cussen, J., to the Registrar, plaintiff filed an affidavit in which she alleged that certain statements, contained in the affidavit of the defendant in support of his application for leave to appear and defend, were false, and would so appear upon his cross-examination thereon. The Registrar ordered the defendant to attend for cross-examination on his affidavit. The defendant appealed.

M. N. Cumarasami for the defendant-appellant:—

Defendant's affidavit entitles him to unconditional leave to defend. He should not have been ordered to appear for cross-examination. If he does not appear, there is nothing in Section 212 or 213 of C.P.C. which prevents his affidavit from being read in evidence. O.38, r.l. corresponds with our Section 213. See note in Yearly Practice headed "To what Rule applies." *Abrahams v. Dunlop Pneumatic Co.*,(1). The Registrar had no jurisdiction to try the merits or truth of the affidavit. In requiring defendant to appear for cross-examination, he has acted without jurisdiction or has exercised his discretion wrongly. Defendant is entitled to unconditional leave to defend without being cross-examined on his affidavit. O.14, r.l. *Millard v. Baddeley*, (3) *Fuller & Co. v. Alexander Bros.*,(2).

Joaquim for the plaintiff-respondent, in reply. Our Section 460 differs in its requirements from O.14, r.l. Defendant's counsel repeats the arguments used before Cussen, J., and which were decided against him. The case was sent back to Registrar to deal with it according to the directions of Cussen, J. He has done this and has exercised his discretion on the evidence before him. The reported decisions show that an Appellate Court will not readily interfere with an exercise of discretion. (*Joaquim* stopped by Court).

Cur. Adv. Vult.

Gordon-Smith, Ag. J.A.—This was an appeal by the Defendant against the Order of the Registrar dated the 18th September, 1939, whereby the Defendant was ordered to attend for cross-examination on his affidavit of the 28th July, 1939.

There has been a previous appeal from an Order of the Registrar of the 3rd August, 1939, under which said Order the Registrar had given conditional leave to defend. This previous appeal was heard by Cussen, J., who allowed the appeal and remitted the matter

back to the Registrar, for the reason that the prior procedure had been wrong in that the Plaintiff had given the Defendant notice to appear for cross-examination whereas such should have been done by an Order of the Registrar upon application by the Plaintiff.

On the hearing of the appeal before me all that I was concerned with was whether the Registrar had properly exercised his discretion in so ordering the Defendant to appear for cross-examination.

The authority for making such order is section 212 and section 213 of the Civil Procedure Code. The affidavit filed by the Defendant in support of his application for leave to defend contains, so it is alleged by the Plaintiff, false statements and particulars and he desires to cross-examine thereon and thereby show to the Court that there is no evidence satisfactory to the Court which discloses any defence to the claim, or facts sufficient to support the application for leave to defend, as provided in section 460(i).

In my opinion the Registrar had properly exercised the discretion vested in him, as to whether to require the Defendant's attendance for cross-examination and I therefore dismissed the appeal. Also, I was of the opinion that the English rules (Order 14) and practice thereunder were not relevant.

Appeal dismissed.